



GUIDELINES FOR THE IMPLEMENTATION AND ENFORCEMENT OF LOUISVILLE METRO COUNCIL'S ORDINANCE PROHIBITING SMOKING IN BUILDINGS OPEN TO THE PUBLIC.

(EFFECTIVE July 1, 2007)

INTRODUCTION

Regulators and business owners will utilize the following guidance document in an effort to more clearly understand ordinance No. 189, Series 2006. The guidance document shall serve as the template for how the smoke free ordinance will be enforced. The following guidelines are a collaborative effort between the Louisville Metro Department of Public Health and Wellness and the County Attorney's Office to interpret the intent of ordinance No. 189, Series 2006. The objective is to clarify regulatory uncertainties for regulators and the regulated business owners.

Section I. Purpose

The Louisville Metro Council believes, based on the studies examined and expert testimony, that smoking in enclosed spaces is a danger to those persons exposed to such smoke and at the least may be a material annoyance, inconvenience, and discomfort to those who do not smoke.

Section II. Authority

These guidelines are promulgated by the Louisville Metro Department of Public Health and Wellness pursuant to Ordinance No. 189, series 2006, An Ordinance Prohibiting Smoking In Buildings Open To The Public.

Section III. Definitions

1. **Building:** Any structure enclosed from the weather, whether or not windows or doors are open, which is closed in overhead by a roof or other covering of any material, whether permanent or temporary, and has eighty percent (80%) or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary. If a person leases or possesses only a portion of a building, the term "building" applies to the leasehold or possessory interest as well.
2. **Conspicuous:** Obvious, prominent, capable of being seen.

3. **Common Area:** An area where individuals may congregate such as hallways, lobbies, restrooms, and elevators.
4. **Director:** Director of Health or his or her designee.
5. **Dwelling:** Any place used primarily for sleeping and conducting activities of daily living, including, without limitation, a hotel or motel room or suite or a hospital, hospice or nursing home room, but not a hotel, motel, hospital, hospice or nursing home lobby, common elevator, common hallway or other common area.

Section IV. Application – Ordinance No. 189, series 2006

1. The regulation applies to **all buildings** as defined in the ordinance. This includes, but is not limited to, restaurants, bars, offices, bowling alleys, bingo halls, hotels and motels, retail outlets, entertainment centers, salons, repair shops, service centers, educational sites, etc. No person shall smoke within any building or establishment, which is open to the public, used to host or hold a public event, or employs one or more persons which work on the premises.
2. **All businesses**, except any facility or property owned, leased or otherwise operated by a person or entity licensed and regulated by the Kentucky Horse Racing Authority under KRS Chapter 230, which has been approved pursuant to KRS 230.300 as part of the licensed person's or entity's place, track or enclosure for conducting horse race meetings, or which has been approved pursuant to KRS 230.380 to simulcast horse racing and conduct pari-mutuel wagering (Churchill Downs) and tobacco manufacturing plants are included under the provisions of the ordinance.
3. **Outdoor spaces are exempt**, unless covered overhead and having at least eighty percent (80%) or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary.
4. Smoking is prohibited within a **reasonable distance from** the outside **entrance** to any building so as to ensure that tobacco smoke does not enter the building through entrances, windows, ventilation systems, or other means.
5. All **ashtrays shall be removed** from any area where smoking is prohibited by sections 90.04 (C) of the ordinance. Permanent structures that functioned as an ashtray shall be disabled or altered to prevent its use as an ashtray.

Section V. Posting of Signs

1. Signs must be posted in any building or establishment that are subject to the ordinance, with letters of not less than one inch or symbols of no less than three inches high, using the words “No Smoking” or the international “No Smoking” symbol consisting of a pictorial representation of a burning cigarette surrounded by a red circle with a red bar across it conspicuously posted on all public entrances so as to be clearly visible upon entry into the building or establishment.

Section VI. Exempt Facilities

1. The following is a list of exempt facilities :
 - Dwellings- to include residences, hotel and motel rooms, and dedicated smoking rooms in hospitals, hospices, and nursing homes.
 - Tobacco Manufacturing Plants.
 - Facilities or property owned, leased or otherwise operated by a person or entity licensed and regulated by the Kentucky Horse Racing Authority under KRS Chapter 230 (examples include Sports Spectrum and Churchill Downs).
 - Outdoor Facilities.
2. Private prohibitions in accordance with this ordinance may be enacted by an owner, lessee, principal manager, or person in control of any place, including without limitation, any motor vehicle, outdoor area, or dwelling and no person shall fail to abide by such private prohibition. The individual establishing the private prohibition shall administer the enforcement of such private prohibition.

Section VII. Enforcement.

1. To report a violation of this ordinance, phone Metro Call at 311 or 574-5000.
2. The Louisville Metro Health Department shall enforce the provisions of the ordinance through:
 - a. Investigation of complaints filed; and,
 - b. Reasonable inspections of premises and records regarding compliance with the ordinance during normal hours of operation.
3. An owner, lessee, principal manager, or person in charge must ask smokers to refrain from smoking in any nonsmoking area and should take all reasonable steps to ensure that the violation is not repeated.

If persons refuse to extinguish their smoking material when asked, the following steps should be taken:

- Ask the person to leave the premises
 - If they refuse to leave, call the Louisville Metro Police Department to report a criminal trespass complaint
4. One or more of the following shall be considered evidence of violation of this ordinance:
 - a. Substantiated complaint;
 - b. Observation of an individual smoking in a building or establishment where smoking is prohibited as provided by ordinance No. 189, series 2006;
 - c. Ashtrays or other cigarette/cigar receptacles in a building or establishment where smoking is prohibited as provided by ordinance No. 189, 2006;
 - d. Serving of individuals found to be in violation of ordinance No. 189, 2006;
 - e. Observation of an owner, manager, employee, or person having control of the building or establishment, knowingly permitting smoking within the building or establishment where smoking is prohibited as provided by ordinance No. 189, series 2006.
 - f. Failure to post applicable signage as required under ordinance No. 189, series 2006.

Section VIII. Citations

1. Citations may be issued to facility owners/operators and or building owners and/or individuals found in violation of this ordinance. The fines are defined in Section G of ordinance No.189, series 2006, and must be paid within seven (7) days from the date of issuance or a request for a hearing must be made to the Code Enforcement Board. Failure to appeal within seven (7) days will result in the person having waived the right to a hearing.
2. Notice of a citation may be provided in the following manner:
 - a. In hand service to the owner, lessee, manager, or person in control of the building;
 - b. First class, registered, or certified mail to the owner, lessee, manager, or person in control of the building; or
 - c. In hand service or service by first class mail to any other person violating the provisions of this regulation.
3. Citations must be paid within seven (7) days to the Louisville Metro Department of Public Health and Wellness, Division of Environmental Health, attention Smoking Citation, 400 E. Gray St., Louisville, KY 40202.
4. Those desiring to appeal the citation must do so within seven (7) days of the citation. A letter requesting appeal must be sent to the Department of Public Health and Wellness, Division of Environmental Health and Protection, attention Smoking Ban Appeals Office. The letter is to contain the following information.
 - Name, address and daytime phone number of the person cited
 - Date of the citation
 - Citation officer
 - Written request to appeal the citation before the Code Enforcement Board
 - Reason for requesting the appeal
5. A hearing before the Code Enforcement Board will be scheduled within 30 days from the date the request is received for the appeal, unless the requestor wants or agrees to a continuance not to exceed 14 days.
6. Violations will be tracked, with regard to determining penalty amounts, in yearly increments which start from the date of the first offense. Each calendar day during which a violation of Section B through I of ordinance No 189, series 2006 occurs shall constitute a separate and distinct offense.